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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

File No. NSD-L-99-34

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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The Illinois Public Telecommunications Association ("IPTA") is an Illinois trade association comprised of 77 independent payphone service providers ("IPPs") in the State of Illinois and related service providers. The IPTA hereby submits these comments on behalf of its members in response to the Commission's Further Notice of Proposed Rulemaking in the instant docket. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Further Notice of Proposed Rulemaking, FCC 03-119 (May 28, 2003) ("*FNPRM*").

**I. THIS NPRM IS GOVERNED BY THE STATUTORY DIRECTIVE TO
PROMOTE THE WIDESPREAD DEPLOYMENT OF PAYPHONE SERVICES
THROUGH ENSURING THAT ALL PAYPHONE SERVICE PROVIDERS ARE
FAIRLY COMPENSATED FOR EACH AND EVERY COMPLETED CALL
USING THEIR PAYPHONE.**

Although the immediate impetus of the instant NPRM is the opinion of the United States Court of Appeals for the District of Columbia regarding the need for proper notice of amendment of the

Commission's rules, the overall requirement of the rulemaking proceeding is to implement and effectively enforce the mandate of Section 276 of the Telecommunications Act of 1996 ("TA96") to

"promote the widespread deployment of payphone services to the benefit of the general public ... (through) regulations that – (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone ..."
47 U.S.C. 276(b)(1).

Both the rules currently in force and those to be adopted by the Commission in this proceeding must be analyzed in the context of effectively implementing and enforcing the objectives and statutory directive as found in Section 276. A review of the current effectiveness of that implementation establishes the need for further development of the rules

A. The Widespread Deployment of Payphone Services For The Benefit Of The General Public Is In Serious Jeopardy Despite The Commission's Actions Taken To Date.

Although Congress and the Commission have dedicated federal policy toward the promotion of the widespread deployment of payphone services for the benefit of the general public, the actions taken to date have been unable to ensure such deployment or the future stability of payphone services. Since the passage of the TA96 there has been a dramatic decrease in the general number of payphone lines available. In Illinois, three of the largest IPPs in the Illinois market have exited the market since 1996. Two of the three largest IPPs in the nation, PhoneTel Technologies, Inc. and ETS Payphones, Inc., have sought bankruptcy protection. Of the remaining three regional Bell operating companies, two of them, BellSouth and SBC, have sought to exit the payphone market. Although subject to significant fixed costs of operation, IPPs in Illinois have experienced consistent diminution of revenues available to cover their costs and to maintain operations.

The loss of revenues stems from two main sources: (1) market forces have caused an increase in cellular usage resulting in an overall decrease in the previous usage of payphone stations; and (2) the lack of compliance with the requirement to compensate the payphone service providers

("PSPs") for each and every completed access code or toll free call ("dial around call") utilizing the payphone resulting in a significant loss of revenue for the PSPs. The impact of loss of traffic to cell phones is a natural market evolution as the telecommunications industry continues to adjust to changing technologies. IPPs though are impeded from responding to such market forces when a major segment of payphone revenue production, access code and toll free calls, are restricted regarding their ability to set market rate compensation needed to cover their costs and their changing revenue sources. PSPs are not allowed to set the rates compensating the PSPs for use of the payphones, cannot block dial around calls, nor have PSPs been effective in enforcement for the collection of the compensation due on each and every completed access code and toll free call. A combination of these factors has placed PSPs in dire economic circumstances that not only prevents the expansion of the deployment of payphone services but also threatens the payphone services very continuance. Although changing technologies are expected to continue to vary the means by which end users utilize the public network, the payphone system is a vital function in the overall universal service scheme, as determined by Congress and as supported by the decisions of this Commission. A failure to address the continuing problems plaguing the payphone industry within the regulatory scheme of access code and toll free call compensation would not only violate the express statutory requirements of compensation for each and every completed call, but would undermine the ultimate goal of widespread deployment of payphones for the benefit of the general public as enunciated in Section 276.

B. Effective and Efficient Implementation and Enforcement Of A Per Call Compensation Plan For Fair Compensation Of Each And Every Completed Call Must Be Implemented To Ensure Widespread Deployment Of Payphone Services.

As the Commission has previously found, PSPs fail to receive compensation for a large number of completed calls originating from their payphones. NPRM, ¶¶ 9-10, 13-14. In an effort to address this violation of the statutory directive, the Commission determined that the first facilities-based carrier receiving an access code or a toll free call should be responsible for the tracking of the call and the payment of compensation to the originating PSP. Through this

NPRM, the Commission seeks to review this proposal and to implement or improve upon its effectiveness in enforcing the statutory directive. Although this enforcement mechanism was first implemented two years ago, and has improved enforcement of the requirement for compensation for each and every completed call, many completed access code and toll free calls originating from payphones still go uncompensated.

In the Commission's Third Report and Order ¹ the Commission determined to implement a compensation scheme with a per call rate set on a cost basis. Based on the record, the Commission determined that PSPs needed to recover \$101.29 per payphone per month to compensate the PSPs for the cost of providing payphone services. Of this amount, 32.4% of the cost recovery was attributed to the access code and toll free completed call traffic. To ensure recoupment of \$33.80 per payphone per month (after the inclusion of interest), the Commission further determined that a marginal payphone location would be expected to receive compensation for 142 access code and toll free completed calls per payphone per month. Based on this expectation, the per call compensation rate was set at \$.24 per completed call. This rate later dropped to \$.238 per completed call. Third Report and Order, ¶¶ 151-152, 191-194.

Despite the Commission's effort to ensure that a marginal payphone would receive the necessary recoupment of costs to enable it to continue providing services, the actual enforcement mechanism resulted in IPPs receiving compensation on far fewer access code and toll free calls than the compensation plan was designed. The Illinois IPPs have received an average compensation payment of less than 100 calls per payphone per month, which level has dropped in recent years. Therefore, instead of a *marginal* payphone receiving approximately \$33.80 per month as designed by the Commission, the *average* IPP payphone has actually received less than \$23.80 per payphone per month, well below the cost recovery set by the Commission.

A review of Illinois IPPs' local exchange carrier ("LEC") switch records reflect corroborating evidence of the lack of enforcement of the statutory requirement to compensate for each and every completed call. A review of the conversation time for access code and toll free calls

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order; and Order on Reconsideration of the Second Report and Order ("Third Report and Order").

originating from payphones for the third and fourth quarter of 2002 reflects a significant discrepancy between the number of calls with significant conversation time, as defined by the ATIF/OBF-EMI industry standard, and the number of calls for which compensation was actually paid. In the third quarter 2002, there were 2,600,000 access code and toll free calls reporting conversation time as defined by the standards. Of these calls, 2,273,000 had conversation time equal to or greater than 10 seconds, or 87% of the calls. There were 1,689,000 calls with recorded conversation time equal to or greater than 45 seconds, or 65% of the calls. Yet, dial around compensation was paid on only 1,024,000 calls, or 39%.

In the fourth quarter 2002, there was conversation time recorded on 2,067,000 access code and toll free calls from these payphones. Of these 1,778,000 calls reported conversation time equal to or greater than 10 seconds, or 86% of the calls. There was conversation time of equal to or greater than 45 seconds on 1,326,000 calls, or 64% of the calls. Yet, access code and toll free call compensation was paid on only 851,000 calls, or 41%. These gross discrepancies reflect a serious deficiency in the enforcement mechanisms for ensuring payment on each and every completed call.

Enforcement problems originated with the inability of a PSP to identify each and every carrier responsible for paying compensation and enforcing payment from such carriers. The Commission sought to address this problem in its previous order by moving the responsibility for tracking completed calls and for making compensation payments to the first facilities-based carrier receiving the call from the local exchange switch. This has mitigated some of the impact of carriers avoiding discovery of their uncompensated use of PSPs' payphones. Nonetheless, even with this correction in the implementation of the per call compensation process, numerous completed calls originating from payphones fail to be compensated. Some of the problems surrounding this shortfall result from the structural failure inherent in the current practice.

Presently the requirement to track the calls effectively lies with the payor, i.e. the carrier who provisions the access code and toll free calls. Effectively, the payor determines the amount to bill itself for the calls it is required to compensate the PSPs. The payor has the natural incentive to ensure that it does not charge itself for any calls that are not completed. However, the payor

has no counter balancing incentive to correct any problems in the identification of each completed call or in ensuring payment thereof. Failure to make payment on each completed call for which the facilities-based carrier is liable goes undetected, since the information necessary to confirm or rebut the facilities-based carrier's payment lies within the facilities-based carrier's system. Therefore, the party determining the number of calls for which compensation is due, and required to make the payment, is also the party in possession of the information necessary to corroborate or challenge the accuracy of the payment to the PSP-payee. Yet the party in possession of the information does not possess the incentive either to ensure that all calls due compensation have been compensated or to correct any problems in the system to ensure that each and every call that it is due compensation has been counted and paid.

The PSP-payee has the incentive to make certain the system is accurate. However, the PSP-payee is not in a position to identify each and every facilities-based carrier that provisions access code and toll free calls. Neither is the PSP-payee able to self determine whether each call is completed. The information upon which the PSP-payee must rely to determine the accuracy of the self declared payments rests with the facilities-based carrier that has already determined on how many of the calls compensation would be made. The PSP-payee has no knowledge of which, or how many, calls the carrier determined that no compensation would be paid.

Under the current practice, there is no incentive for the facilities-based carrier to make the system more accurate, since any corrections or verification of the information could only identify additional calls subject to compensation. Any improvements in the tracking or accuracy of the call count information would only serve to increase the facilities-based carriers' payment obligations to the PSP.

Since the facilities-based carrier has no incentive to negotiate a higher rate, or to increase the number of completed calls for which compensation is paid, there is no market-base incentive upon which a PSP can enter into negotiations with a facilities-based carrier for a more equitable rate or accurate accounting of the compensable calls. Despite the Commission's interest in encouraging the parties to enter into private agreement, whereby a more effective and efficient compensation system may be devised and implemented, the incentives are disproportionately

split between the PSPs and the facilities-based carriers. It is not surprising that private agreements have been the exception rather than the rule. It is necessary to correct the situation and to implement the statutory directive to compensate PSPs for each and every completed call from their payphones, while promoting the objective of the widespread deployment of payphone services. The Commission needs to devise corrections to the system which would enable a balancing of incentives between the parties, so the marketplace may promote a better and more efficient implementation and enforcement of the statutory requirements and goals.

II. THE COMMISSION NEEDS TO CREATE STANDARDS WHICH WILL PROMOTE ACCURACY IN PAYPHONE COMPENSATION PAYMENTS AND CREATE MARKET INCENTIVES FOR GREATER EFFICIENCY AND ENFORCEMENT.

The Commission has inquired whether some alternative means should be considered which would improve meeting the goals of fairly compensating PSPs for each and every call in promoting the widespread deployment of payphone services. The IPTA respectfully submits that in addition to the proposals presented by the Commission in the NPRM, the Commission should establish the following criteria that will seek to bring greater balance in promoting the objectives of TA96 and the Commission's policies.

First, the Commission should continue to require the initial facilities-based carrier that receives an access code or toll free call from the local exchange switch to be responsible for the tracking and payment of compensation for those completed calls to the PSP. This identification of the responsible facilities-based carrier should be based upon the carrier identification code ("CIC") to which the call is initially routed from the LEC switch where the payphone call originates. Second, the Commission should require the LEC to be responsible to providing to the PSP the call detail and CIC information for each and every access code and toll free call from the PSP's payphone from which the call originates. Recovery of any costs for this implementation should be factored into the cost basis and added to the rate for the per call compensation.

Third, the Commission should establish certain rebuttable presumptions that will enhance enforcement of the compensation scheme, enable a balance among the parties, and instill the proper marketplace incentives. The rebuttable presumptions should be as follows: (a) the LEC and/or PSP call detail records should serve as the presumed basis for completed calls responsible for dial around compensation; (b) calls utilizing an 8YY number should be presumed to be toll free calls unless the facilities-based carrier identifies a particular 8YY number to the PSP as an access code number; (c) calls should be presumed to be completed according to the following division: access code calls should be presumed completed 45 seconds after connect time; toll free calls should be presumed completed 99% of the time. Toll free calls, by their very nature, are subscriber 800 calls for which the subscriber has implemented a means for receipt and answer of the call, resulting in a near total completion rate. These rebuttable presumptions can be rebutted by the facilities-based carrier through the production of records sufficient to rebut the presumed call completions as identified above.

These recommendations provide the means and the incentives for a more effective implementation and enforcement of the statutory directives. The PSP-payee, with the incentive to bill each completed call, will have the means to render a bill and the ability to identify the facilities-based carrier to invoice. The facilities-based carrier has the option of accepting the bill or rebutting the bill with the information in the carrier's possession. This is contrary to the existing situation whereby the facilities-based carrier has already determined that number of calls it intends to compensate the PSP while retaining in its possession the information necessary to rebut any of the carrier's determinations. This would provide the facilities-based carrier with the incentive to ensure accuracy in the tracking and payment of the dial around compensation.

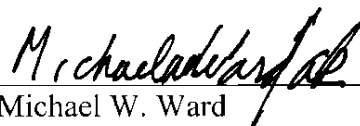
Through equalizing the bargaining positions of both the PSP and the facilities-based carrier, a more accurate implementation and enforcement of the dial around compensation system could be reached. Furthermore, it would provide the needed balance of incentives for the Commission's long sought scheme of encouraging PSPs and facilities-based carriers to enter into private arrangements for a more effective and efficient means of determining compensation payments. Through this balancing of the incentives and the parties' positions, both sides will now have a

reason to sit at the business table and negotiate an arrangement that both may find more effective than the Commission's default system.

The Illinois Public Telecommunications Association respectfully submits that such modifications and adjustments would greatly enhance the Commission's enforcement of the Congressional intent that each and every completed call be compensated and that payphone services continue to be deployed for the benefit of the general public.

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Respectfully submitted,


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